

In the Matter of:  
ChoicePoint Inc.

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**ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE**

C. H. K.

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into by the Attorneys General of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii,<sup>1</sup> Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia,<sup>2</sup> Washington, West Virginia, Wisconsin and the District of Columbia (referred to collectively as the "States"),<sup>3</sup> acting pursuant to their respective consumer protection statutes,<sup>4</sup> and ChoicePoint

<sup>1</sup> With regard to Hawaii, Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to represent the State of Hawaii in consumer protection actions.

<sup>2</sup> With regard to Virginia, this document shall be titled an "Agreement."

<sup>3</sup> Hereafter, when the entire group is referred to as the "States" or "Attorneys General," such designation as it pertains to Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.

<sup>4</sup> ALABAMA - Deceptive Trade Practices Act, Ala. Code §8-19-1 *et seq.*; ALASKA - Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.40.471, *et seq.*; ARIZONA - Arizona Consumer Fraud Act, A.R.S. §44-1530 *et seq.*; ARKANSAS - Deceptive Trade Practices, Ark. Code Ann. §4-88-114; CALIFORNIA - Bus. & Prof Code §§ 17200 *et seq.* and 17500 *et seq.*; COLORADO - Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 to 6-1-1120; CONNECTICUT - Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a *et seq.*; DELAWARE - Delaware Consumer Fraud Act, DEL. CODE ANN. tit. 6, §§ 2511 to 2527; FLORIDA - Florida Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, Florida Statutes, 501.001-501.164, 501.207; HAWAII - Hawaii Rev. Stat. §480-2; IDAHO - Consumer Protection Act, Idaho Code §§ 48-601 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*; INDIANA - Deceptive Consumer Sales Act, Ind. Code Ann. §§ 24-5-0.5-1 to 24-5-0.5-12; IOWA - Consumer Fraud Act, Iowa Code § 714.16; KENTUCKY - Consumer Protection Act, KRS 367.170; LOUISIANA - Unfair Trade-Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401 to 51:1420; MAINE - Maine Unfair Trade Practices Act, 5 M.R.S.A. §210, *et seq.*; MARYLAND - Maryland Consumer Protection Act, Md. Code Ann., Com. Law §13-101, *et seq.*; MASSACHUSETTS - Mass. Gen. Laws c. 93A, §§ 2 and 4; MICHIGAN - Michigan Consumer Protection Act, MCL §445.901 *et seq.*; MINNESOTA - Prevention of Consumer Fraud Act, 325F.68 to 325F.70; MISSISSIPPI - Miss. Code Ann. §75-24-1 *et seq.*; MISSOURI - MO ST §407.010 to 407.130; MONTANA - Montana Code Annotated 30-14-101 *et al.*; NEBRASKA - Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601 *et seq.*, 87-301; NEVADA - Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; NEW JERSEY - Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; NEW MEXICO - New Mexico Unfair Practices Act,

Inc.,<sup>5</sup> a Georgia corporation, its subsidiaries, Successors and Assigns, as those terms are defined herein (collectively, "ChoicePoint"). This Assurance constitutes the documentation effecting this settlement and is intended to and shall be binding upon the States and ChoicePoint (the "Parties") in accordance with the terms hereof.

## **I. RECITALS**

**WHEREAS**, ChoicePoint is a provider of identification and credential verification services to businesses, government agencies and non-profit organizations. ChoicePoint, among other things, collects, maintains, and distributes consumers' personally identifiable information; and

**WHEREAS**, in February 2005, ChoicePoint announced that criminals posing as legitimate businesses gained access to consumers' personally identifiable information. In the wake of these crimes, ChoicePoint, using the California breach notification law as a guide, mailed more than 145,000 notices to consumers across the country whose information may have been viewed or acquired by the criminals. As of the execution date of this Assurance, at least four individuals have been convicted of crimes related to the fraud and are currently

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NMSA 57-12-1 *et seq.*; NEW YORK - N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12); NORTH CAROLINA - North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. 75-1,1, *et seq.*; NORTH DAKOTA - N.D.C.C. §§ 51-15-01 *et seq.*; OHIO - Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*; OKLAHOMA - Oklahoma Consumer Protection Act, 15 O.S. 751 *et seq.*; OREGON - Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; PENNSYLVANIA - Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1 *et seq.*; SOUTH DAKOTA - South Dakota Deceptive Trade Practices and Consumer Protection, SD ST 37-24-1, 37-24-6, 37-24-23, 37-24-31, 22-41-10; TENNESSEE - Tennessee Consumer Protection Act, Tenn. Code Ann. 47-18-101 *et seq.*; TEXAS - Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. And Com. Code 17.41, *et seq.*; VERMONT - Consumer Fraud Act, 9 V.S.A. §§ 2451 *et seq.*; VIRGINIA - Virginia Consumer Protection Act, Section 59.1-198 *et seq.*; WASHINGTON - Washington Consumer Protection Act, RCW §§ 19.86 *et seq.*; WEST VIRGINIA - West Virginia Consumer Credit and Protection Act, WV Code § 46A-1-102; WISCONSIN - Wisconsin Statutes 100.81(1) and 100.207; DISTRICT OF COLUMBIA - DC Consumer Protection Procedures Act, DC Code Ann. §§ 28-3901 *et seq.*

<sup>5</sup> "ChoicePoint" includes its officers, agents, representatives, and employees acting within the scope of their authority on behalf of, or in active concert or participation with, ChoicePoint Inc.

incarcerated; and

**WHEREAS**, a multi-state group of Attorneys General conducted an extensive review and inquiry of ChoicePoint's policies and procedures in place when the criminals unlawfully gained access to consumer information. The inquiry considered, among other things, ChoicePoint's information security breach response and consumer notification policy and procedures; and

**WHEREAS**, ChoicePoint has fully cooperated with the Attorneys General in such review and inquiry by providing certain documents, making others available for inspection and allowing the Attorneys General to interview, in person, key executives and managers with information about ChoicePoint's business practices; and

**WHEREAS**, the Attorneys General have determined that it is in the public interest of their respective States and its residents to enter into this Assurance at this time and conclude such review and inquiry; and

**WHEREAS**, the Parties wish to completely settle, release and discharge all claims under the respective laws of each of the States, including state consumer protection laws, and this Assurance constitutes a good faith settlement of any disputes and disagreements between ChoicePoint and the States.

**NOW, THEREFORE**, in consideration of their mutual agreements to the terms of this Assurance, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **II. STATES' POSITION**

1. The statements contained in this Section represent the position of the States, and

thus, ChoicePoint does not admit the truth of any of the statements contained in this Section.

2. A business that collects consumers' personally identifiable information has a duty to maintain the privacy, security, and integrity of that information by, among other things, restricting access and maintaining proper security measures to safeguard that data.

3. The security breach suffered in 2004 resulted from ChoicePoint's failure to implement or maintain measures appropriate under the circumstances to protect personally identifiable information.

4. Consumers reasonably expect ChoicePoint will, and ChoicePoint has represented, expressly or by implication, that it does employ appropriate measures to (a) ensure that credentialed Subscribers are legitimate businesses with legal purposes, and (b) safeguard consumers' personally identifiable information from unlawful or unauthorized access or disclosure.

5. The States' position is that ChoicePoint's conduct as set forth above violated the States' respective consumer protection statutes.

### **III. CHOICEPOINT'S POSITION**

6. The statements contained in this Section represent the position of ChoicePoint, and thus, the States do not admit the truth of any of the statements contained in this Section.

7. As a business that collects, maintains and discloses certain consumers' personally identifiable information, ChoicePoint recognizes its duty under certain federal and/or state laws to implement measures reasonably designed to maintain the privacy, security, and integrity of that information, by, among other things, restricting access and maintaining appropriate security measures.

8. Prior to the security breach in 2004, ChoicePoint maintained reasonable and

appropriate procedures which have long governed ChoicePoint's businesses. In response to the security breach, ChoicePoint provided substantial assistance to the consumers who may have been affected by the fraud incident, including sending letters to each such consumer, paying for a one-year credit monitoring service, providing, free-of-charge, a combined three-bureau credit report and \$50,000.00 of identity theft insurance, establishing a dedicated toll-free customer service number and dedicated website to respond to inquiries, and making a substantial contribution to a non-profit organization dedicated to assisting victims of identity theft.

9. Since having its protective protocols breached by certain criminals, ChoicePoint has undertaken efforts to effectively address the growing problem of identity theft.

10. As part of the effort to protect consumers, ChoicePoint has elected to exit select consumer-sensitive data markets not regulated by the Fair Credit Reporting Act ("FCRA"). In particular, ChoicePoint has discontinued selling products that contain sensitive personally identifiable information (*e.g.*, Social Security Numbers and drivers' license numbers) in selected markets, foregoing approximately \$15 - \$20 million annually in revenue.

11. ChoicePoint has paid a civil penalty pursuant to the Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief, between ChoicePoint and the United States Federal Trade Commission ("FTC"), which was entered by the United States District Court for the Northern District of Georgia, on February 26, 2006, in *United States v. ChoicePoint* (the "FTC Order") in the amount of Ten Million and 00/100 Dollars (\$10,000,000.00). The parties also acknowledge that ChoicePoint has made a separate payment of Five Million and 00/100 Dollars (\$5,000,000.00) pursuant to the FTC Order to create a fund to be used for certain equitable relief including, but not limited to, consumer redress.

12. ChoicePoint has spent approximately \$12 million since 2005 implementing an

array of privacy and security safeguards/best practices including, but not limited to: limiting customer and employee access to sensitive personally identifiable information; strengthening customer credentialing procedures utilizing multiple internal and external sources and an expanded site visit program; developing and enhancing over ninety (90) policies, procedures and guidelines, including a security breach response and notification policy; improving its audit and compliance programs and significantly increasing the number of audits; establishing company-wide accountability for privacy and security through the creation of the Credentialing, Compliance and Privacy Office, a Security Advisory Committee and various working groups; creating a Consumer Advocate Office for consumer outreach, communication, advocacy, policy and assistance; partnering with the American National Standards Institute and the Better Business Bureau to develop Identity Theft Prevention and Identity Management Standards; enabling consumers to request information on-line about themselves from ChoicePoint for free at [www.choicetrust.com](http://www.choicetrust.com); developing a risk management and internal control framework; requiring annual mandatory on-line training with assessments for employees in three areas (Privacy, Information Security, Code of Conduct); and creating a dedicated privacy Web Site ([www.privacyatchoicepoint.com](http://www.privacyatchoicepoint.com)) with access to hotlines and ChoicePoint's enhanced Privacy Principles.

13. ChoicePoint's position is that its business practices and policies have satisfied, and at present satisfy, in all material respects, the States' respective laws in general and their respective consumer protection statutes in particular.

#### **IV. DEFINITIONS**

14. "Applicant" means any person or entity, excluding consumers, that submits an application to enter into an agreement with ChoicePoint pursuant to which that person or entity

may request or obtain ChoicePoint Reports or Consumer Reports from ChoicePoint. Applicant does not mean any existing Subscriber of ChoicePoint as of ten (10) days after this Assurance becomes effective.

15. “Auditable Subscriber” means a Subscriber who obtains Consumer Reports and/or ChoicePoint Reports.

16. “ChoicePoint Reports” means reports, other than Consumer Reports, which contain Personally Identifiable Information. Notwithstanding any other provision of this Assurance, “ChoicePoint Reports” does not mean reports that consist (a) solely of Publicly Available Information; (b) information pertaining primarily to the testing, evaluation, or analysis of biological samples, fingerprints or other biometric data; or (c) information from the United States Department of Treasury, Office of Foreign Assets Control or other watch lists.

17. “Consumer Report” has the meaning set forth in 15 U.S.C. § 1681a(d), as it may be amended from time to time; provided, however, that in the event of future amendments to the statutory definition of “consumer report,” ChoicePoint shall not be required to retroactively apply the requirements of this Assurance applicable to Consumer Reports to then-existing Subscribers.

18. “Independent Third-Party” means an entity regularly engaged in the practice of providing business audits, evaluations, and/or assessments and not owned (in whole or in part) by ChoicePoint or any of its subsidiaries.

19. “Personally Identifiable Information” means Untruncated (as defined below) individually identifiable information about an individual consumer including, but not limited to: (a) a first name and last name or a first initial and last name; (b) a home or other physical address that includes at least a street name and name of city or town; (c) an e-mail address; (d) a

telephone number; (e) a Social Security Number; (f) credit and/or debit card information, including credit and/or debit card number with expiration date; (g) date of birth; (h) a driver's license number; or (i) any information about an individual consumer that is combined with (a) through (h) above.

20. "Publicly Available Information" means publicly available or consumer provided information whereby ChoicePoint serves as a conduit or facilitates acquisition of the information. Such information shall be (a) information that is or has been made available to the public in any newspaper, magazine, directory, book, website or other publication, and (b) information that is or has been contained in any federal, state, or local government document or record that is available to the public by inspection, written request or otherwise, including, but not limited to, Uniform Commercial Code records, Secretary of State records and licenses, bankruptcy records, tax liens, judgments, transactions related to real property, professional and corporate license information and satisfaction of judgments. Publicly Available Information shall not include Untruncated (as defined below) Social Security Numbers.

21. "Signature" includes, but is not limited to, an original signature, or the facsimile of a signature and an electronic signature, except that ChoicePoint shall be under no obligation to verify the authenticity of any signature.

22. "Subscriber" means any person or entity, excluding consumers, that, as of ten (10) days after this Assurance becomes effective, enters into an agreement with ChoicePoint pursuant to which that person or entity may request or obtain ChoicePoint Reports or Consumer Reports from ChoicePoint.

23. "Subscriber Agreement" means any written agreement between ChoicePoint and a Subscriber pursuant to which ChoicePoint furnishes Consumer Reports or ChoicePoint Reports.



For purposes of subparagraph 44(c), a Subscriber Agreement shall not be deemed to have been renewed if the term thereof is automatically extended pursuant to the terms of the Subscriber Agreement and without further action by either party or both parties thereto.

24. “Successors and Assigns” shall mean any wholly-owned subsidiary or operating company that was engaged in the events which gave rise to this Assurance through the opening of one or more Subscriber accounts which subsequently were determined or reasonably believed to have been fraudulently requested by an organized criminal enterprise and used to access Personally Identifiable Information.

25. “Untruncated” means the furnishing of a complete data element, such as a Social Security Number, or driver’s license number, rather than the furnishing or displaying of only a portion of such a data element as a result of masking, suppression, redaction, or other similar technique.

26. Notwithstanding any other provision of this Assurance, the obligations herein undertaken by ChoicePoint shall not apply to any Applicant or Subscriber that requests or obtains only reports that meet both of the following criteria: (a) the report is not a Consumer Report, and (b) the report is limited to one or more of the following types of information: (i) name of individual; (ii) physical and/or mailing address; (iii) telephone number(s); (iv) date of birth; and (v) any Publicly Available Information.

27. Notwithstanding any other provision of this Assurance, the obligations undertaken by ChoicePoint shall not apply with respect to any Applicant or Subscriber that requests or obtains only reports in which (a) the information is limited to a shared database used as a fraud or misconduct detection or prevention tool, which information is not regulated by the FCRA or Drivers Privacy Protection Act or their State analog statutes; (b) the end user is required to have

a license agreement in place with a third-party (non-ChoicePoint) entity that is the source of the information; (c) information about an insurance policy or insured is communicated to a third party on behalf of an insurance carrier Subscriber pursuant to state law or by virtue of a contractual obligation necessitated by state law, which is binding on the insurance carrier Subscriber; or (d) marriage, divorce, death and/or birth records are accessed. This paragraph relates to instances in which ChoicePoint facilitates access to such information.

## **V. ENFORCEMENT**

28. Subject to the provisions of this Assurance, any State may present this Assurance to a court of competent jurisdiction in that State so as to qualify said Assurance as an “Assurance of Voluntary Compliance,” an “Assurance of Voluntary Discontinuance” or similar Agreement (collectively, “Assurance”) as provided by the laws of such State.

29. Each signatory State agrees that the measures undertaken by ChoicePoint pursuant to this Assurance are sufficient to satisfy the legal obligations of ChoicePoint in said State with respect to the subject matter giving rise to this Assurance.

30. This Assurance constitutes a complete settlement and release by the States of all civil claims and causes of action against ChoicePoint, and their Successors, Assigns and subsidiaries, including any of their officers, agents, directors, servants, employees, or salespersons, with respect to ChoicePoint’s measures designed to maintain the privacy and security of consumer’s personally identifiable information, which could have been asserted by the States under the cited consumer protection statutes or other similar consumer protection statutes which give the States the authority to sue, but does not release any anti-trust or tax claims.

## **VI. DISPUTE RESOLUTION**

31. In the event that any dispute arises between ChoicePoint and any State with respect to ChoicePoint's compliance with this Assurance, such State shall not initiate any proceeding in law, equity or otherwise with respect to such dispute without first exhausting the resolution procedures described below in paragraph 32.

32. The States agree that before seeking any relief from any court for any alleged violation of this Assurance, and if in the discretion of any State, the violation does not threaten the health, safety, or welfare of the citizens of that State, such State will give ChoicePoint ten (10) business days written notice of the alleged violation. ChoicePoint shall be provided the opportunity to respond to such State regarding the alleged violation within that ten (10) business day period. Within the ten (10) business day period, ChoicePoint may request a meeting to discuss the alleged violation. If ChoicePoint makes such a request, the States shall meet with ChoicePoint, either by phone or in person, at the earliest possible date, but in no event more than ten (10) business days from the date of ChoicePoint's request.

## **VII. GENERAL PROVISIONS**

33. This Assurance and the rights and obligations of the Parties hereunder shall be governed within each of the respective States by the laws of such States in which any enforcement of this Assurance or any action to determine the rights and obligations hereunder is attempted.

34. This Assurance does not constitute an approval by the States of any of ChoicePoint's standards, procedures or practices, and neither ChoicePoint nor any of its agents, employees, contractors or representatives shall make any representation to the contrary.

35. ChoicePoint's obligations under this Assurance shall be in addition to those

imposed by federal law, or the law of the respective States, including, but not limited, to statutes, regulations and court decisions.

36. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the States or by the Federal government or any Federal agency, such that ChoicePoint contends the statute or regulation is in conflict with any provision of this Assurance and therefore that ChoicePoint cannot comply with both the statute or regulation and the provision of this Assurance, ChoicePoint shall provide advance written notice of at least forty five (45) days to the States of the inconsistent provision of the statute or regulation with which ChoicePoint intends to comply and of the counterpart provision of this Assurance that ChoicePoint contends is in conflict with the statute or regulation. If the States disagree, any State shall within thirty (30) days of receipt of ChoicePoint's notice notify ChoicePoint that the States do not agree there is a conflict between the requirements of the Assurance and the newly enacted state or federal law. If ChoicePoint disagrees with the States' contention that there is no conflict, ChoicePoint shall comply with the terms of the Assurance until such time as ChoicePoint obtains a court order modifying the Assurance. Any contention by ChoicePoint that a provision of this Assurance conflicts with a judgment in an action brought by States against ChoicePoint, or any agreement between the States and ChoicePoint shall also be resolved pursuant to the provisions of this paragraph.

37. In the event the FTC Order is modified or interpreted by the Federal government or any Federal agency, such that ChoicePoint contends the FTC Order is in conflict with any provision of this Assurance and therefore that ChoicePoint cannot comply with both the FTC Order and the provision of this Assurance, ChoicePoint shall provide advance written notice of at least forty five (45) days to the States of the inconsistent provision of the FTC Order with which

ChoicePoint intends to comply and of the counterpart provision of this Assurance that ChoicePoint contends is in conflict with the FTC Order. If the States disagree, any State shall within thirty (30) days of receipt of ChoicePoint's notice notify ChoicePoint that the States do not agree there is a conflict between the requirements of the Assurance and the modification of the FTC Order. If ChoicePoint disagrees with the States' contention that there is no conflict, ChoicePoint shall comply with the terms of the Assurance until such time as ChoicePoint obtains a court order modifying the Assurance.

38. Nothing in this Assurance shall be construed as a waiver of any private rights of any person. Nothing in this Assurance, however, shall provide any rights to, or permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

39. ChoicePoint agrees that this Assurance constitutes a legally enforceable obligation of ChoicePoint enforceable in accordance with its terms.

40. This Assurance does not constitute an admission by ChoicePoint of any fact or any violation of any local, state or federal law, rule or regulation. ChoicePoint enters into this Assurance without admitting any wrongdoing and for settlement purposes only. This Assurance is made without trial or adjudication of any issues of fact or law. This Assurance does not constitute admission of any issues of fact or law.

### **VIII. ASSURANCES**

41. ChoicePoint shall implement and maintain procedures reasonably designed to achieve compliance with this Assurance.

42. ChoicePoint shall not misrepresent, expressly or by implication, the manner or extent to which ChoicePoint maintains and protects the privacy, confidentiality, or security of any Personally Identifiable Information collected from or about consumers.

## **IX. CHOICEPOINT'S COMMITMENTS**

### **Credentialing of Applicants**

43. ChoicePoint shall, within one hundred fifty (150) days of the effective date of this Assurance, implement and maintain a written program, including development of a credentialing checklist (which shall include all of the protocols set forth in subparagraphs 43 (a)-(d) of this Assurance) for the processing of applications and credentialing of Applicants (other than a federal, state or local governmental entity (*e.g.*, department, agency, administration, etc.)) (the "Credentialing Program"), that shall include reasonable procedures designed to protect Consumer Reports and ChoicePoint Reports from unauthorized, fraudulent, or unlawful access by the Applicant and that shall include the following requirements:

- a. Before allowing an Applicant access to Consumer Reports or ChoicePoint Reports, ChoicePoint shall implement and maintain reasonable procedures designed to verify the business identity of the Applicant and that the Applicant is engaged in the business certified. ChoicePoint shall obtain from each such Applicant written certification(s), a signed Subscriber's application or other certification made by the Applicant, either in paper or electronic form, stating the nature of the Applicant's business and the purpose(s) for which the Applicant plans to obtain Consumer Reports or ChoicePoint Reports from ChoicePoint. Each certification, or Subscriber's application, under this provision must (1) be dated and signed, and (2) state that the person signing it has direct knowledge of the facts certified or is duly authorized to execute the certification or the Subscriber's application. With respect to telephonic applications and applications received by facsimile, ChoicePoint shall not provide the Applicant with access to

ChoicePoint Reports until it receives confirmation in writing from the Applicant as to the nature of the Applicant's business and the purpose(s) for which the Applicant plants to obtain ChoicePoint Reports;

- b. For an Applicant that will have access to Consumer Reports, ChoicePoint shall determine, based on the information in the certification required by subparagraph (a) above, that the Applicant has a permissible purpose under Section 604 of the FCRA, 15 U.S.C. § 1681b, and the States' respective fair credit reporting laws to obtain Consumer Reports or, where the Applicant would be a reseller of Consumer Reports, that the Applicant complies with Section 607(e)(2) of the FCRA;
- c. For an Applicant that will have access to Consumer Reports, ChoicePoint shall implement and maintain reasonable procedures designed to verify the business identity and legitimacy of the Applicant and that the Applicant is engaged in the business certified. ChoicePoint shall conduct an onsite visual inspection of the business premises of such Applicant, or, where the Applicant has more than one location, the headquarters location of the Applicant; provided, however, that ChoicePoint shall not be required to conduct an onsite visual inspection if ChoicePoint independently verifies at the time of application that:
  - i. The Applicant is a publicly held company under the regulatory authority of the United States Securities and Exchange Commission;
  - ii. The Applicant is subject to the regulatory authority of any agency listed in Section 621(b) of the FCRA, 15 U.S.C. § 1681s(b);
  - iii. The Applicant is an insurance agent sponsored by at least one insurance

- company that (1) has been a Subscriber of ChoicePoint for at least one year, and (2) has contractually agreed to assume financial responsibility for the payment of the sponsored agent's acquisition of Consumer Reports from ChoicePoint;
- iv. The Applicant has been approved by the Internal Revenue Service as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and as a Subscriber will not receive from ChoicePoint, unless first provided to ChoicePoint by the Subscriber, any of the following information about consumers: Untruncated Social Security Numbers, Untruncated dates of birth, Untruncated driver's license numbers, or Untruncated credit card, debit card, bank account, or other financial account numbers;
  - v. The Applicant has been certified by the Small Business Administration ("SBA") for participation in an SBA administered program, such as the Section 8(a) Business Development Program and the Small Business Disadvantaged Business Program, 13 C.F.R. part 124, or the Historically Underutilized Business ("HUBZone") Program, 13 C.F.R. parts 121, 125, and 126;
  - vi. The Applicant has been certified by the Department of Transportation for participation in the Department of Transportation's Disadvantaged Business Enterprise Program, 49 C.F.R. part 26; or
  - vii. The Applicant is a Federal, state or local governmental entity; and
- d. For an Applicant that will have access to ChoicePoint Reports, ChoicePoint shall



implement and maintain reasonable procedures for the evaluation of applications designed to identify indicators that: (1) may be associated with fraudulent applications; (2) call into question the Applicant's business, the business in which the Applicant is engaged, or the stated purpose(s) for which Applicants seek access to ChoicePoint Reports. ChoicePoint shall conduct such further investigation as may be necessary, which may include on-site visual inspection of the Applicant's business premises, where any such indicator or any of the following indicators is present:

- i. Application information or supporting documents are inconsistent, missing, or cannot be verified;
  - ii. Application documents contain facially contradictory or illogical information;
  - iii. A cellular telephone number is identified by the Applicant or ChoicePoint as the Applicant's sole telephone number;
  - iv. The Applicant does not have its own dedicated fax number; or
  - v. The Applicant uses a post office box or similar mail drop as its only address.
- e. The obligations undertaken by ChoicePoint in this paragraph shall expire ten (10) years from the effective date hereof, unless any State requests in writing that the obligations continue for another period of ten (10) years. In the event that any State so requests, the obligations undertaken by ChoicePoint in this paragraph shall continue for another period of ten (10) years.

### **Auditing of Subscribers**

44. ChoicePoint shall, within one hundred fifty (150) days of the effective date of this Assurance, implement and maintain a written program for auditing Auditable Subscribers. The auditing of Auditable Subscribers program (the “Auditing Program”) shall include policies and procedures reasonably designed to protect Consumer Reports and ChoicePoint Reports from unauthorized, fraudulent, or unlawful access by any Auditable Subscriber and shall include the following requirements:

- a. On an annual basis, ChoicePoint shall perform on-going audits on a sample of its Auditable Subscribers. The sample to be audited shall have the following characteristics: (1) the sample cohort shall be chosen each year at random from the universe of all Active Auditable Subscribers (as defined below) but shall contain a percentage of New Auditable Subscribers (as defined below) at least equal to the percentage of New Auditable Subscribers in ChoicePoint’s Active Auditable Subscriber base as of the fourth quarter of the previous calendar year, and (2) the sample size shall include a sufficient number of Auditable Subscribers drawn from the universe of all Active Auditable Subscribers, so as to produce results achieving a ninety-five percent (95%) confidence level and margin of error not greater than five percent (5%) using standard statistical methodology. (The term “New Auditable Subscriber” shall mean an Auditable Subscriber whose application for Subscriber status was granted by ChoicePoint six months or less before the date the audit sample is selected. The term “Active Auditable Subscriber” shall mean an Auditable Subscriber who accessed Personally Identifiable Information within twelve (12) months before the date the sample is

selected.) The audit shall seek to determine whether the Subscriber's activity is consistent with the purpose(s) referred to in subparagraph 43(a).

- b. ChoicePoint shall develop procedures to determine which indicators may be associated with fraudulent or illegal activity or activity that does not comply with the Subscriber's Agreement or the purpose(s) referred to in subparagraph 43(a), or that otherwise call into question the authenticity of the Subscriber's business or stated purpose for access to Personally Identifiable Information. Where any such indicator is present, ChoicePoint shall further investigate to determine whether the Subscriber's activity is consistent with the nature of the Applicant's business and purpose(s) referred to in subparagraph 43(a).
- c. ChoicePoint will ensure that it has provisions in its new Subscriber Agreements, or Subscriber Agreements renewed within thirty (30) days or more after the effective date of this Assurance, requiring the Subscriber to comply with applicable laws.
- d. The following procedures shall apply beginning within thirty (30) days of the effective date of this Assurance, with respect to Subscribers with access to Consumer Reports (and with respect to Subscribers of companies acquired by ChoicePoint after the effective date of this Assurance, within sixty (60) days after the closing of the acquisition transaction):
  - i. When any Subscriber certifies a permissible purpose under Section 604(a)(3) of the FCRA, ChoicePoint shall require the Subscriber to identify and certify the specific subsection of Section 604(a)(3) (either by section or description, such as "insurance underwriting") that provides the

permissible purpose to obtain the Consumer Report.

- ii. When any Subscriber certifies as its permissible purpose a “legitimate business need” pursuant to Section 604(a)(3)(F) of the FCRA, ChoicePoint shall require that the Subscriber certify and identify with specificity that business need (*e.g.*, “in connection with applications for apartment rentals”). In those cases where a Subscriber has permissible purposes that encompass more than one “legitimate business need” under Section 604(a)(3)(F), then individual certification and identification with specificity must be obtained by ChoicePoint each time the Subscriber requests a Consumer Report.

- e. The obligations undertaken by ChoicePoint in this paragraph shall expire ten (10) years from the effective date hereof, unless any State requests in writing that the obligations continue for another period of ten (10) years. In the event that any State so requests, the obligations undertaken by ChoicePoint in this paragraph shall continue for another period of ten (10) years.

45. To develop, implement and maintain the Credentialing Program and Auditing Program (collectively the “Programs”) in paragraphs 43 and 44, respectively, ChoicePoint, within one hundred fifty (150) days of the effective date of this Assurance, shall:

- a. Designate appropriate personnel to coordinate and oversee the Programs;
- b. Establish and document reasonable policies and procedures designed to identify reasonably foreseeable internal and external material risks which may result in unauthorized, fraudulent, or unlawful access by Applicants or Subscribers;
- c. Train relevant employees and develop and keep updated relevant training

- materials and internal procedures for monitoring compliance with the Programs;
- d. In 2008, 2010 and 2012, ChoicePoint shall be subject to Independent Third-Party assessments of its compliance with the Programs discussed herein. The Parties agree that Independent Third-Party assessments conducted pursuant to the FTC Order meet this requirement;
  - e. Review and make adjustments as ChoicePoint reasonably deems appropriate, in light of the findings or recommendations resulting from the Independent Third-Party assessments required by subparagraph (d) of this paragraph;
  - f. Provide the States with an opportunity to inspect and review the written Independent Third-Party assessments required by subparagraph (d) of this paragraph. A copy of such Independent Third-Party assessments shall be delivered to the designated representatives for California and Vermont so long as the laws of such states treat said assessments as exempt from the relevant public records laws; and
  - g. Maintain, for a period of three (3) years after the effective date of this Assurance, and upon request make available to the States for inspection in paper form or in electronic form capable of being printed, all documents reasonably relating to compliance with this Assurance, including:
    - (i) Applications, Subscriber Agreements and supporting documents, including the written certification referred to in subparagraph 43(a) and site visit documentation used by ChoicePoint in connection with its verification of the identity of the Applicant or where applicable, documentation of the reason no site visit was performed; and

(ii) All reports, audits, policies, and training materials whether prepared by or on behalf of ChoicePoint, relating to ChoicePoint's compliance with the Programs required by this Assurance.

h. The obligations undertaken by ChoicePoint in this paragraph shall expire ten (10) years from the effective date hereof, unless any State requests in writing that the obligations continue for another period of ten (10) years. In the event that any State so requests, the obligations undertaken by ChoicePoint in this paragraph shall continue for another period of ten (10) years.

46. After the effective date of this Assurance, ChoicePoint shall: (a) deliver a copy of this Assurance to all current officers, directors, and all associates no later than thirty (30) days after the date upon which this Assurance is effective, and (b) shall, for a period of three (3) years, include a copy of said Assurance in all new hire training packages.

#### **X. PAYMENT PROVISIONS**

47. ChoicePoint agrees to pay within thirty (30) days of the effective date of this Assurance, the aggregate sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to the States, in individual checks made payable to such accounts as the States shall direct. Such sum shall be divided among the States as they may agree and may be designated for investigative costs, or for consumer education, local consumer aid funds, State Attorneys General identity theft training, and/or for any other purpose authorized by state law at the discretion of each State's Attorney General as allowed by each State's law.

#### **XI. APPLICABILITY OF ASSURANCE**

48. The duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to ChoicePoint Inc., its subsidiaries and operating companies that

collect and maintain Personally Identifiable Information.

## **XII. MISCELLANEOUS PROVISIONS**

49. Any notices required or permitted by this Assurance shall be in writing and sent by United States mail, certified mail return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document to the person(s) at the addresses specified in Exhibit A. Either Party may change or add the name and address or addresses of the person(s) designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this paragraph.

50. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

51. Notwithstanding any other provision of this Assurance, the obligations undertaken by ChoicePoint shall not apply with respect to any Subscriber that is a Federal, state or local governmental entity.

52. ChoicePoint's agreement to undertake the obligations described herein shall not be construed as evidence that such steps are necessary in order to comply with any statute, regulation or other rule of law of any State, nor shall such agreement be construed as evidence that such measures did not exist at ChoicePoint prior to the execution of this Assurance, nor shall this Assurance otherwise prejudice the position of ChoicePoint with respect to whether it has complied with any statute, regulation or other rule of law of any State.

53. This Assurance shall be deemed to have been mutually drafted by the Parties and shall not be construed against either Party as the author thereof.

54. This Assurance will be effective and thus valid and binding upon the Parties seven (7) business days after said Assurance has been signed by each of said Parties.

55. Notwithstanding any portion of this Assurance, the obligations herein undertaken by ChoicePoint shall not apply to any act or omission by ChoicePoint within any State that is not a signatory to this Assurance or to any report on any individual who is not a resident of a signatory State at the time the report is made.

56. Nothing in this Assurance shall be construed to authorize or require any action by ChoicePoint in violation of applicable Federal, state or other laws.

57. Nothing contained herein, and no act required to be performed hereunder, including, but not limited to, the provision of information and/or material, is intended to require the disclosure by ChoicePoint of any communication by and between any officer, director, employee, agent or consultant of ChoicePoint and any person retained to provide ChoicePoint with legal advice, or otherwise, to constitute, cause or effect any waiver (in whole or in part) of (a) attorney-client privilege, work product protection, or common law defense privilege, or (b) confidential, proprietary or trade secret exception under each States' respective public records laws.

58. Except as expressly provided elsewhere in this Assurance, ChoicePoint shall ensure that entities acquired by ChoicePoint subsequent to the effective date of this Assurance are brought into compliance with the applicable terms of this Assurance within one (1) year after the closing of the acquisition transaction. Provided, however, that in the event that ChoicePoint acquires an entity during the period between the date on which ChoicePoint signs this Assurance and the effective date of this Assurance, the one (1) year compliance period shall begin to run as of the effective date of this Assurance.

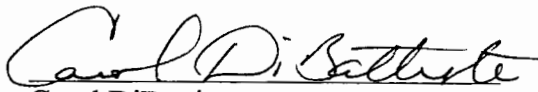
59. For a period of three (3) years from the date this Assurance is effective, ChoicePoint shall notify the Offices of the Attorneys General, in writing, of any changes in its



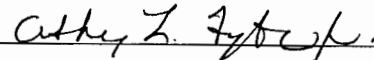
corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a Successor or Assign, the creation or dissolution of subsidiaries, or any other changes in ChoicePoint's status that may affect compliance with obligations arising out of this Assurance, within sixty (60) days of such change.

IN WITNESS WHEREOF, ChoicePoint and each State, through their fully authorized representatives, have agreed to this Assurance.

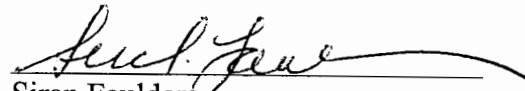
Dated: 5-22-07

By:   
Carol DiBattiste  
General Counsel & Chief Privacy Officer  
ChoicePoint Inc.

Dated: 5/23/07

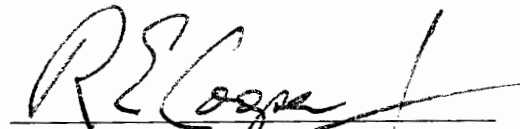
By:   
Ashley L. Taylor, Jr.  
Counsel for ChoicePoint Inc.

Dated: 5/23/07

By:   
Siran Faulders  
Counsel for ChoicePoint Inc.

In re: ChoicePoint, Inc.

Date: MAY 3 2007



ROBERT E. COOPER, JR.  
Attorney General & Reporter



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(615) 741-2614  
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At the Request of:



MARY CLEMENT  
Director  
Division of Consumer Affairs  
Department of Commerce and Insurance  
500 James Robertson Pkwy.  
5th Floor, Davy Crockett Tower  
Nashville, TN 37243-0600  
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